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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re)	Bk. No. 10-60823
)	
NELSON VILLIANUEVA REYES AKA	)	CHAPTER 13
NELSON V. REYES, NELSON REYES AND)	
CLAIRE DE LA CRUZ REYES AKA CLAIRE	)	R.S. No. LSR – 70
D. REYES,)	
	)	MOTION FOR RELIEF FROM
Debtors.	)	<u>AUTOMATIC STAY</u>
)	
	)	Hearing-
	)	Date : August 30, 2011
	)	Time : 10:00 AM
	)	Place : U.S. Bankruptcy Court
	)	280 South First Street
	)	San Jose, California
	)	Courtroom 3099

Deutsche Bank National Trust Company, as Trustee for HarborView Mortgage Loan Trust, Mortgage Loan Pass-Through Certificates, Series 2006-7, a holder in due course, its assignees and/or successors, move the Court for relief from the Automatic Stay provided by 11 U.S.C. §362. This motion seeks an Order terminating the Automatic Stay of 11 U.S.C. §362 as to moving party (and the Trustee under the Deed of Trust securing moving party's claim) so that moving party (and its Trustee) may commence and continue all acts necessary to foreclose under the Deed of Trust secured by Debtors' property. This Motion is brought pursuant to 11 U.S.C. §362(d)(1) for "cause" and due to the failure of Debtors to make required payments as set forth in the Declaration, attached hereto and incorporated herein by reference. Debtors' failure to make

1 required payments provides "cause" for relief from the Automatic Stay in accordance with the
2 ruling of the Bankruptcy Appellate Panel in In re: Ellis, 60 B.R. 432.

3
4 In addition, and in the event that this Court continues the Automatic Stay, Movant
5 will seek adequate protection of its secured interest pursuant to 11 U.S.C. §§361 and 362, including
6 a requirement that Debtors reinstate all past arrearages and immediately commence regular monthly
7 payments.

8 Movant alleges that the commercially reasonable value of the subject Property is
9 approximately \$338,500.00, as evidenced by Debtor's Schedules A and D filed with this Court, a
10 copy of which is attached hereto and made a part hereof. Movant requests that this Court take
11 judicial notice of the aforementioned Schedules pursuant to Federal Rule of Evidence Section 201.

12 Movant also seeks an Order terminating and vacating the Automatic Stay for all
13 purposes as it pertains to Movant's interest in the subject real Property, including the prosecution of
14 appropriate foreclosure remedies, without the requirement of further notice or publication, except as
15 may be required by state law.

16 Furthermore, Movant seeks attorneys' fees and costs incurred in bringing this
17 Motion. Movant requests such fees pursuant to the Contract securing Movant's claim or pursuant to
18 11 U.S.C. §506(b). Post-petition attorneys' fees and costs for the within motion may be added to
19 the outstanding balance of the subject Note, pursuant to Travelers Casualty v. Pacific Gas and
20 Electric Co., 549 U.S. _____ (2007), and as allowed under applicable non-bankruptcy law.

21 In addition, Movant requests such further relief as is just.

22 This Movant also seeks an Order waiving the 14-day stay described by Bankruptcy
23 Rule 4001(a)(3).

24 This Motion shall be based on these moving papers, as well as the attached
25 Declaration.

26 Responsive pleadings, points and authorities and declarations are not required, but
27 may be filed, pursuant to Bankruptcy Local Rule 4001(f).
28

1 In the event neither Debtors, the Debtors' Counsel or the Trustee appears at a hearing
2 on this motion, the Court may grant relief from the Automatic Stay permitting moving party to
3 foreclose on the Debtors' property located at **46 Sierra Vista Place, San Jose, California** and obtain
4 possession of such property without further hearing.
5

6 WHEREFORE, Movant prays judgment as follows:

7 1.) For an Order granting relief from the Automatic Stay, permitting this Movant to
8 move ahead with foreclosure proceedings under Movant's Deed of Trust.

9 2.) For such Order regarding adequate protection of Movant's interest as this Court
10 deems proper.

11 3.) For attorneys' fees and costs for suit incurred herein.

12 4.) For an Order waiving the 14-day stay described by Bankruptcy Rule 4001(a)(3).

13 5.) For such other relief as this Court deems appropriate.

14 PROBER & RAPHAEL, A LAW CORPORATION

15 DATED: July 16, 2011

By /s/ Lee S. Raphael Esquire

LEE S. RAPHAEL, ESQUIRE, #180030
Attorney for Movant